P.E.R.C. NO. 2000-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY PROSECUTOR'S OFFICE, Respondent, -and- COMMUNICATION WORKERS OF AMERICA, LOCAL 1032, AFL-CIO, Charging Party.	:	PERC Docket No. CO-H-96-41
WARREN COUNTY PROSECUTOR'S OFFICE, Respondent, -and- KATHERINE BERGMANN, Appellant,	:	OAL Docket No. CSV 9007-96

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Warren County Prosecutor's Office. The Complaint was based on an unfair practice charge filed by the Communications Workers of America, Local 1032, AFL-CIO. The charge alleges that the Prosecutor violated the New Jersey Employer-Employee Relations Act when he terminated Katherine Bergmann, a senior clerk stenographer, allegedly in retaliation for her activity as a member of CWA's negotiations team. Bergmann also appealed the termination to the Merit System Board. The charge and the appeal were consolidated for a hearing before an Administrative Law Judge. The ALJ issued a decision finding that the Prosecutor was not hostile to Bergmann's union activity and that her termination was not in retaliation for such activity. He also found that her termination did not violate civil service laws. The Commission adopts the ALJ's conclusions that Bergmann's union activity was not a motivating factor in her termination.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2000-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY PROSECUTOR'S OFFICE, Respondent, -and- COMMUNICATION WORKERS OF AMERICA, AFL-CIO, LOCAL 1032, Charging Party.	:	PERC Docket No. CO-H-96-41
WARREN COUNTY PROSECUTOR'S OFFICE, Respondent, -and- KATHERINE BERGMANN, Appellant,	:	OAL Docket No. CSV 9007-96

Appearances:

For the Respondent, David A. Wallace, County Counsel

For the Charging Party-Appellant, Weissman & Mintz, attorneys (James M. Cooney, of counsel)

DECISION

On October 3, 1995, the Communications Workers of America, AFL-CIO, Local 1032 filed an unfair practice charge against the Warren County Prosecutor's Office. The charge alleges

that the Prosecutor violated 5.4a(1) and (3)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when he terminated Katherine Bergmann, a senior clerk stenographer, allegedly in retaliation for her activity as a member of CWA's negotiations team.[2/]

The Prosecutor filed an Answer. He denied that Bergmann's termination was related to her CWA activities.

Bergmann also appealed her termination to the Merit System Board (MSB). Her appeal alleged that the Prosecutor violated N.J.S.A. 11A:2-24 and N.J.A.C. 4A:2-5.1 by terminating her in retaliation for her complaints to the Department of Personnel (DOP) that the Prosecutor had violated Civil Service law by making her a senior clerk stenographer on a temporary basis and granting leaves of absence to the secretary with whom she switched jobs. The Prosecutor responded that he did not learn of these complaints until five months after her termination.

The unfair practice charge and the MSB appeal were consolidated for a hearing before Administrative Law Judge Marylouise Lucchi-McCloud. The initial decision was to be

---

1/ These provisions prohibit public employers, their representatives or agents from: "(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

2/ The charge contained other allegations no longer in dispute.

forwarded to both agencies, with the Commission first determining whether an unfair practice had occurred and the MSB then determining whether the Civil Service Act had been violated.

Hearings were held on September 1, 2, and 29, 1998. The parties introduced exhibits, examined witnesses, and filed post-hearing briefs. When it filed its post-hearing brief, CWA also filed a motion with the ALJ to amend its charge to allege that Bergmann was terminated for whistleblowing in connection with her Civil Service status.

Judge Lucchi-McCloud retired on disability before she could issue a decision. The case was reassigned to ALJ Thomas R. Vena. Neither party asked that the hearing be reopened.

On October 12, 1999, Judge Vena issued his decision. He found that the Prosecutor was not hostile to Bergmann's CWA activity and that her termination was not in retaliation for such activity. He therefore recommended dismissing the unfair practice charge. Judge Vena did not consider the motion to amend the charge. He also concluded that her termination did not violate Civil Service laws because she had held an interim appointment rather than a permanent position.

CWA filed exceptions contesting the recommended dismissal of the charge and incorporating its post-hearing brief. It asserts that the ALJ did not make adequate findings of fact and conclusions of law and the record demonstrates that Bergmann was unlawfully terminated under Civil Service law and our Act for whistleblowing and her CWA activity.

The Prosecutor's response asserts that the exceptions do not specify the facts in question and the record citations relied upon; the alleged whistleblowing is irrelevant because the ALJ did not grant CWA's motion to amend its charge to make such allegations, the ALJ did not consider those allegations, and CWA did not except to the ALJ's not granting its motion; and the Prosecutor was not hostile to Bergmann's CWA activity.

CWA submitted a reply letter without permission. N.J.A.C. 19:14-7.3(g). The Prosecutor objected. We decline to consider the reply letter.

We have reviewed the record. We adopt the ALJ's findings of fact (slip op. at pp 3-4) concerning the charge, with one correction and some additions.3/

CWA did not hold the representation election; the Commission conducted the election and certified CWA as the majority representative based on its results. We add these facts. The collective negotiations agreement between CWA's predecessor and the Prosecutor excluded temporary employees from the negotiations unit (2T8; R-3). The Prosecutor challenged Bergmann's right to vote in the CWA election because he considered her to be a temporary employee. This objection was inconsistent

---

3/ The exceptions violate N.J.A.C. 19:14-7.3(b), but we must review the record on our own. In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). CWA's post-hearing brief contains transcript citations and is incorporated in the exceptions.

with a County personnel document (P-12) listing her as a provisional employee, but it was explained that the County computer system could not record her as temporary without changing her hire date for purposes of calculating benefits (2T67-68; J-4). The Prosecutor had considered her position to be a temporary one before the election and before Bergmann contacted DOP about her status (R-1). Bergmann was designated as a member of CWA's negotiations team, but was terminated before any negotiations sessions (1T61). CWA had employees submit duties questionnaires to the Prosecutor collectively (P-18; P-21), but he insisted that they be reviewed individually because job titles and duties were not subject to negotiations under the prior contract (P-19; P-23). That issue was then dropped (2T143). When CWA grieved Bergmann's termination, the Prosecutor responded that she was not a permanent or provisional employee represented by CWA (P-17). The Prosecutor never evinced hostility towards Bergmann as a union representative or towards other employees serving as union representatives (2T60-2T62).

Based on our review of the record and our findings of fact, we adopt the ALJ's conclusion that Bergmann's CWA activity was not a motivating factor in her termination. The Prosecutor's objections to Bergmann's voting and to dealing collectively with the duties questionnaires were not unfounded or indicative of hostility. This record demonstrates that the Prosecutor was not hostile to the negotiations process or to Bergmann's activities as a shop steward or negotiations team member.

The unfair practice charge cited Bergmann's CWA activity as the reason for her termination. CWA now asks us to find that the Prosecutor terminated her for complaining to DOP about her temporary position and that such a motivation violated the Employer-Employee Relations Act as well as the Civil Service law. We decline to consider such a finding. No motion to amend the charge was made before the hearing ended and no exception was raised to the ALJ's tacit denial of the post-hearing motion. The whistleblowing issue does not involve collective activity and is limited to a dispute about an individual employee's job status under Civil Service requirements. The MSB is in the best position to adjudicate the whistleblower claim and can do so once we transfer the case to it.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: April 27, 2000
Trenton, New Jersey
ISSUED: April 28, 2000

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 9007-96

PERC DKT. NO. CO-H-96-41

KATHERINE BERGMANN,

Appellant,

v.

WARREN COUNTY PROSECUTOR'S OFFICE,

Respondent.

James Cooney, Esq., for Appellant (Weissman & Mintz, attorneys)

David A. Wallace, Esq., for Respondent (Warren County Counsel, attorney)

Record Closed: September 29, 1999 Decided: October 12, 1999

BEFORE **THOMAS R. VENA,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This appeal through the Merit System Board ("MSB" or "Board") was transmitted to the Office of Administrative Law (OAL) on August 21, 1996 for determination as a contested case pursuant to *N.J.S.A.* 52:14B-1 to 15 and *N.J.S.A.* 52:14F-1 to -13. It is brought pursuant to *N.J.A.C.* 4A:2-5.1 *et seq.* alleging that Appellant was removed from her employment in retaliation for disclosure of a violation of law or rule contrary to the provisions of *N.J.S.A.* 11A:2-24.

On August 18, 1997, a motion for consolidation and a predominant interest determination pursuant to *N.J.A.C.* 1:1-17.3 was made to consolidate this matter with the Appellant's claim pending before the Public Employment Relations Commission (PERC), which alleges that Appellant was removed in retaliation for union activities in violation of *N.J.S.A.* 34:13A-5.4

By order dated October 22, 1997, Marylouise Lucchi-McCloud, ALJ, to whom the matter had been assigned, consolidated the MSB and PERC matters without making a predominant interest determination. Judge Lucchi-McCloud ordered that when an initial decision was rendered it would be forwarded to both agencies with PERC first making a determination as to the alleged unfair labor practice and then the MSB conducting its review and making its Final Decision. The October 22, 1997 Order was adopted by the MSB and PERC by silence pursuant to *N.J.A.C.* 1:1-17.7(b).

Hearings were thereafter held on September 1, 1998, September 2, 1998 and September 29, 1998 before Judge Lucchi-McCloud, at which time the witnesses described in the attached appendix were heard and the exhibits therein listed were accepted in evidence. The record was left open pending receipt of post-hearing submissions and replies thereto which were submitted on February 16, 1999, March 29, 1999 and April 1, 1999 by Appellant and on February 16, 1999, March 30, 1999 and April 1, 1999 by Respondent.

By letter dated September 15, 1999, Director and Chief Judge Barbara A. Harned advised the parties that Judge Lucchi-McCloud had retired on disability without being able to issue an initial decision and that the matter was assigned to me. She also advised the parties that I was authorized to issue an initial decision with or without recalling witnesses pursuant to the provisions of *N.J.A.C.* 1:14.13(b) and requested that they advise me on or before September 29, 1999 should they wish to submit a position on whether or not an initial decision can be rendered on the transcripts and exhibits and with or without recalling witnesses. Judge Harned also invited the parties to request a conference as contemplated by *N.J.A.C.* 1:1-14.13(a) but asked only that such a request be received by September 22, 1999.

Neither a request for a conference nor an application for an opportunity to submit a position relative to an initial decision based on a review of transcripts and exhibits with or without recalling witnesses was received.

I have reviewed the transcripts and documents entered in evidence and **FIND** that an Initial Decision can be issued without recalling witnesses and without prejudice to either party.

FACTUAL BACKGROUND

Appellant, Katherine Bergmann (hereinafter "Appellant"), was employed in the unclassified local service as a secretary to a Superior Court Judge in Warren County from 1986 to 1988. In or about February 1988, Appellant was appointed as a secretary in the unclassified service of the Warren County Prosecutor's Office (hereinafter "Office"), where she served as former Prosecutor Hare's personal secretary. In or about September 1992, John J. O'Reilly (hereinafter "O'Reilly") was appointed Warren County Prosecutor and continued Appellant as his personal secretary. In 1993, O'Reilly informed Appellant that she would assume the duties of senior clerk stenographer within the classified service in the Juvenile and Domestic Relations Section of the Office on a temporary, interim basis, while Anna Herb (hereinafter "Herb"), a permanent employee of the Office, would assume Appellant's former duties as O'Reilly's secretary. As per that arrangement, Appellant and Herb essentially switched positions. Shortly after this job switch in 1993, Herb began an extended leave of absence from her position as senior clerk stenographer without pay, approved by O'Reilly,[1] while serving as his personal secretary.

While in the employ of the Office, Appellant was a member of the clerical workers "in-house" union, called the "Clerical Staff of the Warren County Prosecutor's Office Union." In May 1994, Appellant was elected to serve as shop steward for the union, and also served on the union's negotiating team. Shortly thereafter, in or about September 1994, Appellant began corresponding with the County Personnel Director's

[1] The anticipated duration of Herb's leave of absence was up to four years, during which time Appellant was expected to serve as senior clerk stenographer on an interim basis.

Office concerning her employment status. In short, Appellant requested that she be considered for permanent status, and requested an assessment or audit of her senior clerk stenographer Civil Service title. Appellant alleged that she was performing duties out of title and that her position should be reclassified. While Appellant's correspondence with the County Personnel Office was still occurring, in or about May 1995, the Communications Workers of America (hereinafter "CWA") held a representation election in which a majority of classified clerical workers in the Office approved their representation. Prior to the election, O'Reilly challenged Appellant's eligibility to vote, claiming that she was a temporary employee and as such, could not be a member of the union. O'Reilly did not object to the CWA's selection of Appellant as one of its designated representatives during collective negotiations.

On or about June 9, 1995, Appellant filed a classification appeal with the New Jersey Department of Personnel (hereinafter "DOP"), and included a duties questionnaire which the Office management refused to sign. On or about June 16, 1995, Appellant sent a letter to the DOP, in which she requested that her senior clerk stenographer position be made permanent, and alleged that O'Reilly's approval of Herb's extended leave of absence violated the Warren County Personnel Policy prohibiting such a lengthy leave of absence.[2] On or about June 20, 1995, Appellant filed an addendum to her DOP letter, alleging that O'Reilly violated the New Jersey Administrative Code (hereinafter "Code") by approving Herb's lengthy leave of absence. Additionally, Appellant reiterated her request that her position be made permanent. Finally, Appellant alleged that *N.J.S.A.* 2A:130-19 and -20 prohibited her removal or transfer from her position as O'Reilly's secretary to the position of senior clerk stenographer on a temporary or interim basis.[3] On or about July 5, 1995,

---

[2] Appellant alleges that this policy allows an employee in the classified service to apply for a one-year leave of absence only.

[3] *N.J.S.A.* 2A:158-19 provides that the former R.S. 2:182-16 (L.1939, c.271, p.694, §1) is saved from repeal; that provision states:

> All persons holding secretarial and stenographic positions in the office of the prosecutor of the pleas and the office of county detectives in counties having a population of not less than eighty-two thousand nor more than one hundred and seventy-five thousand, who have devoted full time to the duties of their office

Appellant submitted another duties questionnaire to the DOP, which her direct supervisor had signed, but which O'Reilly refused to sign. On or about July 21, 1995, the DOP responded to Appellant's letters, and told her that until her name appeared on a county eligibility list for the position of senior clerk stenographer she could not be afforded permanent employment status within the County. Additionally, the DOP stated that it lacked jurisdiction to enforce the alleged violation of the policy.

On or about July 24, 1995, O'Reilly terminated the services of Appellant, allegedly for insubordination, on the basis of the various letters that she had written to the DOP. Appellant subsequently filed the within appeals, claiming both violations of Civil Service laws and unfair practices in contravention of PERC laws. In short, Appellant alleges that the Office retaliated against her for the exercise of her union activities and rights under Civil Service laws.

DISCUSSION

Applicable Law

The parties both acknowledge that claims under *N.J.S.A.* 11A:2-24 (*N.J.A.C.* 4A:2-5.1) and *N.J.S.A.* 34:13A-5.4 are governed by the "Wright Line" test articulated by the Supreme Court in *In Re Bridgewater Township*, 95 *N.J.* 235 (1984).[4] Applied herein, Appellant has the burden of showing that she was engaged in activity protected

---

> for five continuous years, shall have an enjoy tenure of office and service.

N.J.S.A. 2A:158-20 provides that the former R.S. 2:182-17 (L.1939, c.271, p.694, §2) is saved from repeal; that provision states:

> No such employee having and enjoying tenure of office and service shall be suspended or discharged nor shall their compensation be decreased, except upon a sworn complaint of inefficiency or misbehavior and after a fair and impartial hearing before the judge of the court of common pleas of such county.

[4] See Appellant's Brief at p.10 and p.17, Respondent's Brief at p.3, *Mendoza v. Wagner Youth Correctional Facility*, 94 *N.J.A.R.* 2d (CSV) 135 (1993) and *In the Matter of Joseph Link*, ___ *N.J. Super.* ___ (1993) (unpublished, Docket No. A-1521-91-T5, attached in its entirety to Respondent's Brief.)

by *N.J.S.A.* 11A:2-24; *i.e.*, engaged in the "disclosure of information on the violation of any law or rule" and/or protected by *N.J.S.A.* 34:13A-5.4, *i.e.*, engaged in union activity and that the employer knew of the activity of the employee, was hostile to it and that such union activity or disclosure of information was a substantial motivating factor in the employee's termination. Then, and only then, the employer bears the burden of showing that the termination was for legitimate business reasons.

The Unfair Labor Practice Claim

Appellant has alleged that the Office retaliated against her for her union activity and thus the New Jersey Employer-Employee Relations Act (*N.J.S.A.* 34:13A-1 through 13A-29) (hereinafter "the EERA") is implicated. The EERA established the Division of Public Employment Relations (hereinafter "Division"), charged exclusively with "matters of public employment related to [*inter alia*] settlement of public employee representative and public employer disputes and grievance procedures." *N.J.S.A.* 34:13A-5.1(a). Additionally, the EERA established within the Division the PERC, charged with implementing the provisions of the EERA, making policy, and establishing rules and regulations concerning "employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters." *N.J.S.A.* 34A:13A-5.2

In pertinent part, the EERA prohibits unfair practices on the part of public employers as follows:

> a. Public employers, their representatives or agents are prohibited from:
>
> (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.
>
> (2) Dominating or interfering with the formation, existence or administration of an employee organization.
>
> (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or

> discourage employees in the exercise of the rights guaranteed to them by this act.
>
> (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.
>
> (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.
>
> (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.
>
> (7) Violating any of the rules and regulations established by the commission.
>
> [*N.J.S.A.* 34:13-5.4 (emphasis added).]

Additionally, in conjunction with these prohibitions, the EERA provides that "[p]ublic employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity." *N.J.S.A.* 34:13A-5.3 *See also, N.J.S.A.* 34:13A-5.3. ("Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations"); *N.J.S.A.* 34:13A-12 ("Nothing contained in this act shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States").

Pursuant to the provisions of *N.J.S.A.* 34:13A-5.4(c), PERC has the exclusive authority to prevent public employers from engaging in any unfair practices. In this regard, following the allegation of a public employer's unfair practice, PERC has the authority to issue and serve a complaint specifying the alleged unfair practice, as well as hold a hearing on such charge. *Id.* Moreover, if PERC determines that such an unfair practice occurred, it has the authority to issue and serve an order requiring that the public employer cease and desist from such practice, and "to take such reasonable affirmative action as will effectuate the policies of the [EERA]." *Id.* As far as enforcement is concerned, PERC has the authority to apply to the Appellate Division

for an "appropriate order" enforcing any of its unfair practice orders. *N.J.S.A.* 34:13A-5.4(f).

Within the EERA, under the authority granted in *N.J.S.A.* 34:13A-5.2, *N.J.S.A.* 34:13A-5.9 and *N.J.S.A.* 34:13A-16.5, PERC has promulgated rules and regulations "to effectuate the purposes of the [EERA]," found at *N.J.A.C.* 19:10-1.1 through 19:19 (hereinafter "PERC Rules"). As set forth in the PERC Rules, an unfair practice charge may be brought against any public employer by any public employee, public employee organization, or their representatives. *N.J.A.C.* 19:14-1.1. The charging party bears the burden of prosecuting an "unfair practice proceeding" and proving the allegations of the complaint by a preponderance of the evidence. *N.J.A.C.* 19:14-6.8. Regarding the contents and service of an unfair practice complaint, *see, N.J.A.C.* 19:14-2.1. With respect to hearings transmittals of matters from hearing officers to PERC, and PERC actions, *see, N.J.A.C.* 19:14-7.1, 19:14-8.1, and with respect to enforcement and compliance, *see, N.J.A.C.* 19:14-10.1 *et seq.*

As set forth in *N.J.S.A.* 34A:13A-5.4, *supra*, the EERA prohibits unfair practices on the part of public employers including, *inter alia*: (1) interfering with their employees' exercise of rights guaranteed by the EERA; (2) discriminating with respect to employees' tenure of employment or any term or condition of employment on the basis of their exercise of rights guaranteed by the EERA; or (3) discharging or discriminating against employees for their filing an affidavit, complaint, or petition under the EERA. *See also, N.J.S.A.* 34:13A-5.3, *supra* at p.18, which provides that "[p]ublic employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or refrain from any such activity." In line with these EERA provisions, as well as the PERC Rules promulgated thereunder, case law has established the law regarding retaliation for union activity.

Beginning with the seminal case of *Matter of Bridgewater Twp., supra*, the New Jersey Supreme Court set forth the standards for determining whether, in the absence of direct evidence of anti-union animus or motivation, retaliation for union activity had

occurred. This test, derived from the national Labor Relations Board decision in *Wright Line*, 251, *NLRB* 1083 (1980), provides that:

> in the absence of any direct evidence of anti-union motivation for disciplinary action, a prima facie case must be established by showing that the employee engaged in protected activity, that the employer knew of this activity, and that the employer was hostile toward the exercise of the protected rights.
>
> [*Bridgewater*, 95 *N.J.* at 246 (emphasis added).]

Additionally, under this test, where "dual motives" have been asserted for the public employer's action (*i.e.*, anti-union motivation and legitimate business reason), the employees must first establish that their exercise of a protected activity was a "substantial, *i.e.*, a motivating factor" in the employer's action. If this is accomplished, then the burden shifts to the public employer to establish by a preponderance of the evidence that the action occurred for a legitimate business reason and not in retaliation for protected activity. *Id.* at 244. The continued use of this test by PERC and the courts has been approved by the Court. *See, Matter of Hunterdon County Bd. Of Chosen Freeholders*, 116 *N.J.* 322, 334-35 (1989) ("We have found the use of this test . . . to be 'sound, balanced and fair to both sides' in situations where anti-union animus must be detected in dual-motivation situations . . .. We thus approve PERC's use of this test in the present context."). *See also, COTA v. Molinelli Farms*, 114 *N.J.* 87, 100-01 (1989).

In the instant case, Appellant has alleged unfair practices in the form of retaliation for her union activity. Respondent denies the allegation and further asserts reasons for Appellant's termination. In support of Appellant's anti-union animus claim, she offers only evidence of her marginal participation in and support of union activity and O'Reilly's objection to her voting in a representation election due to his position relative to her "temporary" status.

Merely because an employee is a "union activist" and is thereafter terminated is not, without more, sufficient to show that there is a nexus between the union activity

and the removal. To suggest that nexus automatically exists is to infer that those who participate in union activity are entitled to greater protection than any other employee. That is not the law as it exists today or at the time of Appellant's removal. There must be some evidence that the union activity was a substantial motive for the termination. In the absence of evidence of such anti-union animus and retaliation therefore it is simply not relevant whether there was a legitimate reason for the removal.

Whatever the reason for O'Reilly's termination of the Appellant, it was not due to her union activity. Not only was there no evidence to substantiate such a claim but, in fact, there was ample evidence of a lack of hostility to union practices. O'Reilly's insistence on protection of the prerogatives of his office, as he perceived them, is not, standing alone, evidence of an unfair labor practice.

I, therefore, **CONCLUDE** that Appellant has not sustained her burden of proof relative to the unfair labor practice charge.

The "Whistleblower" Claim

As noted above, Appellant also claims that her termination was in retaliation for the "disclosure of information on the violation of any law or rule" entitling her to relief pursuant to *N.J.S.A.* 11A:2-24 and *N.J.A.C.* 4A:2-5.1 (the "Whistleblower" statute under Civil Service law). Initially, before such improper motive can be attributed to the public employer here we must come to some understanding of Appellant's status under Civil Service law. Only then can we determine whether any alleged "disclosure of information" was an attempt to notify authorities of the "violation of any law or rule."

Warren County is a political subdivision which adheres to the Civil Service laws, and the terms and conditions of Appellant's employment are governed by the respective Civil Service statutory and regulatory provisions. *See, N.J.S.A.* 11A:9-1 which states in pertinent part:

> This title shall apply to any political subdivision to which the provisions of Title 11 . . . and the supplements thereto applied immediately prior to their repeal and to any political

> subdivision which hereafter adopts the provisions of this title.[5]

Accordingly, the provisions of the Civil Service Act, *N.J.S.A.* 11A:1-1 to 11A:12-6 (hereinafter "the Act"), and the rules and regulations promulgated thereunder, *N.J.A.C.* 4A:1-1.1 through 4A:2-6.2 (hereinafter "the Regulations") govern this dispute. As set forth in the Act, the DOP was created to implement and enforce the Act. *N.J.S.A.* 11A:2-1; 11A:2-2. Additionally, the MSB and the Commissioner of Personnel (hereinafter "Commissioner") were created and delegated particular powers and duties regarding the enforcement of the Act. *N.J.S.A.* 11A:2-1, *see, N.J.S.A.* 11A:2-6 for the Board's powers and duties, and *see N.J.S.A.* 11A:2-11 for the Commissioner's powers and duties.

Among the expressly enumerated powers and duties of the Commissioner, and of particular relevance to the instant case, are the following:

> The commissioner shall provide for the following types of appointment:

---

[5] But *see, N.J.S.A.* 11A:3-5, which excepts certain unclassified positions in political subdivisions from the provisions of the Act:

> The political subdivision unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include the following:
>
> * * *
>
> i. One secretary, clerk or executive director to each department, board and commission authorized by law to make the appointment;
>
> j. One secretary or clerk to each county constitutional officer, principal executive officer, and judge;
>
> * * *
>
> m. One secretary or confidential assistant to each unclassified department or division head established in subsection l;
>
> * * *

> a. Regular appointments shall be to a title in the competitive division of the career service upon examination and certification or to a title in the noncompetitive division of the career service upon appointment. The appointments shall be permanent after satisfactory completion of a working test period;
>
> b. Provisional appointments shall be made only in the competitive division of the career service and only in the absence of a complete certification, if the appointing authority certifies that in each individual case the appointee meets the minimum qualifications for the title at the time of appointment and that failure to make a provisional appointment will seriously impair the work of the appointing authority. In no case shall any provisional appointment exceed a period of 12 months;
>
> c. Temporary appointments may be made, without regard to the provisions of this chapter, to temporary positions established for a period aggregating not more than six months in a 12-month period as approved by the commissioner. These positions include, but are not limited to, seasonal positions. Positions established as a result of a short-term grant may be established for a maximum of 12 months. Appointees to temporary positions shall meet the minimum qualifications of a title;
>
> * * *
>
> f. Unclassified appointments shall be made pursuant to *N.J.S.* 11A:3-4 and *N.J.S.* 11A:3-5.
>
> [*N.J.S.A.* 11A:4-13 (emphasis added).]

Additionally, with regard to classification of positions, the MSB is charged with assigning and reassigning titles among the career service, senior executive service and unclassified service and the Commissioner is delegated the following duties:

> The commissioner shall:
>
> a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions;
>
> b. Establish, consolidate and abolish titles;

> c. Ensure the grouping in a single title of positions with similar qualifications, authority and responsibility;
>
> d. Assign and reassign titles to appropriate positions; and
>
> e. Provide a specification for each title.
>
> [*N.J.S.A.* 11A:3-1]

Within the Act, under the authority granted in *N.J.S.A.* 11A:2-6, the MSB has promulgated rules and regulations, whose stated purpose is "[t]o establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with [the Act]." *N.J.A.C.* 4A:1-1.1. The scope of the Regulations covers all appointing authorities and career service public employees subject to the Act, unless otherwise specified. *N.J.A.C.* 4A:1-1.2(a) and (b). Moreover, the Regulations "shall be considered the means by which the statutory purposes of the merit employment system are carried out." *N.J.A.C.* 4A:1-1.2(c). Within the Regulations, *N.J.A.C.* 4A:1-1.3 provides the following definitions, which are relevant to the instant matter:

> **"Career Service"** means those positions and job titles subject to the tenure provisions of Title 11A, New Jersey Statutes.
>
> **"Permanent employee"** means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.
>
> **"Provisional appointment"** (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.
>
> **"Regular appointment"** (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.
>
> **"Unclassified service"** means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

Beyond these definitions, the Regulations further expand upon the various types of appointments as follows. *N.J.A.C.* 4A:4-1.7, which governs "temporary appointments," provides:

> (a) The Commissioner may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Commissioner to a position established as a result of a short-term grant.
>
> (b) A temporary appointee shall meet the minimum qualifications for the title.
>
> (c) *See, N.J.A.C.* 4A:4-4.7 for effect on permanent appointment rights.
>
> (d) Consecutive temporary appointments in excess of the periods set forth in (a) above are prohibited.
>
> [Emphasis added.]

N.J.A.C. 4A:4-1.5, which governs provisional appointments, provides:

> (a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:
>
> 1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
>
> 2. The appointee meets the minimum qualifications for the title at the time of the appointment; and
>
> 3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.
>
> (b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which

period may be extended by the Commissioner for good cause.

[Emphasis added.]

N.J.A.C. 4A:4-1.6, which governs interim appointments, provides in pertinent part:

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;

2. Is on indefinite suspension;

3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Merit System Board on appeal; or

4. Has accepted an interim appointment.

* * *

(e) When an appointing authority does not make an appointment in the situations listed in (b) above, the appointing authority shall reserve a position/title for the absent employee as a vacant position/title.

(f) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, on indefinite suspension or awaiting final administrative action of the Merit System Board on the appeal of a disciplinary demotion or removal.

1. At the end of the interim appointment, the appointee shall return to his or her permanent title.

(g) An interim appointee shall possess the minimum qualifications for the title.

* * *

(k) The appointing authority shall advise interim appointees of their rights under an interim appointment. *See, N.J.A.C.* 4A:4-4.7 for effect on permanent appointment rights.

See also, N.J.A.C. 4A:4-1.3, concerning unclassified appointments generally, which provides:

> (a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Board.
>
> (b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. *See, N.J.A.C.* 4A:3.

With respect to unclassified positions and local service, *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be within the career service, "except for those job titles allocated by the Board to the unclassified service as provided in *N.J.A.C.* 4A:3-1.3." *N.J.A.C.* 4A:3-1.3, which concerns the unclassified service, provides in pertinent part that:

> (a) A job title shall be allocated by the Board to the unclassified service when:
>
> * * *
>
> 2. In local service, the title is so designated under *N.J.S.A.* 11A:3-4;
>
> 3. The title is designated unclassified by another specific statute;
>
> 4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
>
> 5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.
>
> (b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of

> subordinates subject only to the legislative power of the governing body and applicable statutes.
>
> (c) In local service, a principal executive officer, for purposes of unclassified appointments under *N.J.S.A.* 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.
>
> [Emphasis added.]

Thus, a public employee receives either a "regular appointment" or "provisional appointment" to either the "career service" or the "unclassified service." In addition to regular and provisional appointments to the career service, appointments can be permanent (granting the full panoply of tenure rights) or temporary. Temporary appointments may be made for a limited period in terms of time (either six or 12 months) or on an interim basis to temporarily replace an absent employee. Provisional appointments (pending permanent appointment from a list of eligibles) are limited to 12 months.

Notwithstanding these respective time limits, long-standing case law has established that provisional and temporary appointments may be indefinite or open-ended in duration, and in such cases, the appointments do not convert into permanent status. *See, Adams v. Atlantic City*, 26 *N.J. Misc.* 259 Supreme Ct. Of N.J., Atlantic County 1948) (Civil Service temporary appointment cannot be converted into permanent appointment except through compliance with terms of Civil Service Act). *See also, Shalvoy v. Johnson*, 87 *N.J.L.* 547 Supreme Court of N.J. 1913 (court attendant's temporary appointment was not converted into a permanent tenure [under law of 1912]).

In *Capibianco v. Civil Service Comm'n.*, 50 *N.J. Super.* 307 (App. Div. 1960), the plaintiff appealed from the Civil Service Commission's (hereinafter "Commission's") determination that he never acquired permanent status after his assignment to duty in a temporary capacity as the police chief of Asbury Park. The plaintiff brought an action in lieu of prerogative writs in the Law Division, asserting that as a matter of law he was entitled to permanent status as the police chief, and that no competitive exam was

required. The court dismissed the complaint, holding that there were insufficient proofs and the Commission had not held a hearing; in this regard, the trial court ruled that "it was not in the interests of justice to dispense with requiring plaintiff to exhaust his administrative remedies before the Commission." *Capibianco*, 60 *N.J. Super.* 314. Although the Commission ultimately heard the matter, "defer[ring] to the court's wishes and entertain[ing] the matter," the Appellate Division found it noteworthy that the Commission "did not recognize that [the plaintiff] had a right of appeal to it . . . or that it has ever indicated it would grant him a hearing on his purported claim of tenure as chief." *Id.* In its determination, the Commission ultimately found that the plaintiff's status had never risen above that of "permanent deputy chief, assigned temporarily to fill the duties of chief of police." *Id.*

On appeal to the Appellate Division, the plaintiff argued that his appointment to the position of acting police chief "conferred upon him the full authority of chief of police" and his continue services in that status for over three months was the equivalent to a permanent appointment under the former Civil Service statute *R.S.* 11:22-6.[6] *Id.* The Appellate Division found no merit in this argument and ruled that as a matter of law, tenure applied only to permanent appointments and positions, but not to temporary appointments or positions. *Id.* at 315. Ultimately, the court held that the "mere appointment of [the plaintiff] as acting chief to discharge temporarily the duties of chief could not ripen into a permanent position. *Id.* at 316. Additionally, with respect to the alleged violations of the former Civil Service statute *R.S.* 11:22-15,[7] the Appellate Division stated:

> While [the plaintiff's] employment as acting chief may have violated *R.S.* 11:22-15, this is no reason to declare that he thereby gained permanent status. The mere passage of time during which a temporary appointee serves in office, and the failure of the Civil Service Commission to hold an

[6] This former statute provided that appointments and promotions to positions in the competitive classes of the classified service were for a probationary period of three months, and unless the employee was notified in writing by the end of the three month period that no permanent appointment was to be made, then the employee retained the position permanently.

[7] This former statute limited temporary employments to two months, and prohibited successive temporary employments, with the exception of one approved extension.

> examination or take other action against such an appointee, cannot convert a temporary status into a permanent one.
>
> [*Id.* at 319 (emphasis added).]

A similar result occurred in *O'Malley v. Dept. of Energy*, 109 *N.J.* 309 (1988), *cert. denied in* 110 *N.J.* 297, where the New Jersey Supreme Court addressed the issue of whether the former Department of Energy may be equitably estopped from returning an employee from his provisional appointment as a supervisor to his permanent appointment as a senior engineer, when a promotional exam was not given between the date of the provisional appointment and the date of the demotion. After the Commission ruled that the plaintiff was not entitled to a hearing on the matter because he was not permanently appointed to the position, he appealed to the Appellate Division, arguing that the Department of Energy should be estopped from transferring him back to his former position. The Appellate Division reversed the Commission's determination and remanded the matter, holding that the plaintiff "may not be dislodged from his provisional appointment without being afforded the opportunity to qualify as a permanent appointee in the position." *O'Malley v. Dep't. of Energy*, 212 *N.J. Super.* 114, 123 (1986), *rev'd.* 109 *N.J.* 309 (1988).

In reversing the Appellate Division's decision, the Supreme Court relied upon the Act, its predecessor acts and their legislative histories to find that there was no express or intended creation of a right in provisional employees to retain provisional appointments until examinations were given. *O'Malley*, 109 *N.J.* at 316. Notably, the Court stated the following in this regard:

> It is the welfare of the public, not that of a particular provisional employee, that underlies Civil Service legislation. We believe it would thwart the legislative intent to allow a provisional employee to retain his or her position merely because the Commission could not offer a timely test. To this extent we disagree with the Appellate Division's conclusion that O'Malley was entitled to rely on the Department's representations that a permanent appointment would be made in accordance with Civil Service rules.
>
> [*Id.* (emphasis added).]

Ultimately, the Court ruled that the Department of Energy and Commission were not equitably estopped from transferring the plaintiff from his provisional position to his permanent position. The Court relied heavily on the legislative goal of appointments based on "merit and fitness," which is met by competitive examinations, "not by holding a position beyond the time prescribed by the Legislature." *Id.* at 316-17.

Appellant relies on *Kyer v. City of East Orange*, 315 *N.J. Super.* 524 (App. Div. 1998) to reach a contrary result. In *Kyer*, a municipal employee brought a wrongful discharge action in the Law Division. At trial, the jury found that the discharge was not for disciplinary reasons and awarded damages. After the court set aside the damages award, the plaintiff appealed. In deciding this appeal, the Appellate Division phrased the issue as follows:

> The issue raised by this appeal is whether a merit system provisional employee in the municipal classified service who is denied the opportunity to become a permanent employee by reason of the municipality's negligence and her own unawareness of merit system requirements may, after seven years of exemplary service, be summarily discharged.
>
> [*Kyer,* 315 *N.J. Super.* at 525.]

The Appellate Division noted that provisional appointees were not afforded the panoply of rights "reserved" for permanent employees, and that the plaintiff's provisional appointment fell under the 12 month time limitation imposed by *N.J.S.A.* 11A:4-13b, but nonetheless found that the plaintiff's dismissal "after seven years of effective and unblemished employment contravenes the underlying policy of the Civil Service Act." *Id.* at 530. In this regard, the Appellate Division rephrased the issue as follows:

> The real question then is whether a municipality can be permitted, whether by design or negligence, to effectively abrogate the Civil Service Act by retaining an employee in provisional status long after the twelve-month maximum period prescribed by *N.J.S.A.* 11A:4-13b.
>
> [*Id.*]

Ultimately, the Appellate Division, like the Court in *O'Malley*, rejected the use of estoppel, but nonetheless held that under the facts of the case, the plaintiff was entitled to a retroactive determination of her job rights by the DOP. In this regard, the Appellate Division stated:

> It is our view that a delicate balance must be struck between the public and private interests that are subject to prejudice when a governmental entity fails to comply with its statutory obligations. Estoppel is not the answer . . .. [Instead] we are convinced that there is a solution that accommodates all of the competing interests and that that solution lies with the Department of Personnel [to now determine the plaintiff's qualifications].
>
> [*Kyer,* 315 *N.J. Super.* at 532-33.]

The Appellate Division concluded by stating:

> In sum, plaintiff was badly used by East Orange, which she served well and faithfully for seven years. She had a right to rely on its probity and compliance with its civil service obligations . . .. We therefore hold that where, as here, a long-term provisional employee has performed satisfactorily and has failed to achieve permanent status because of the appointing authority's neglect, the [DOP] has the authority to retroactively, as it were, determine the employee's qualifications by such methods as it shall in its discretion deem appropriate and to further determine whether, had the inquiry into qualifications been timely made, the employee would have achieved permanency in the normal course of municipal management of its affairs.
>
> [*Id.* at 534 (emphasis added).]

In line with these cases concerning the rights of temporary or provisional appointees is the long-established principle that such employees serve at the will of the appointing authority. *See, e.g., Barringer v. Miele*, 6 *N.J.* 139 (1951) (appointing authority's power to make temporary appointment carries with it power to terminate such employment); *Williams v. Civil Service Commission*, 66 *N.J.* 152 (1974) (provisional or temporary employee subject to termination at any time at discretion of

municipal appointing authority and not entitled to hearing before Commission, but entitled to post-termination evidentiary hearing before municipal governing body).

Thus, notwithstanding the time limits on both temporary and provisional appointments imposed by the Civil Service Act, case law has established that provisional and temporary appointments may be indefinite or open-ended in duration, and in such cases, the appointments do not transform into permanent status. Accordingly, more than one year's service in a position does not transform a temporary appointment into a permanent one.

Here, the mere passage of time did not convert Appellant's employment whether termed interim, temporary or provisional, to permanent status. Contrary to the implication in Appellant's post-hearing submission, this temporary/interim vs. provisional status lasted for less than two years. The first five years of Appellant's tenure at the Office was as an unclassified employee.

A review of the evidence makes clear, and I so **CONCLUDE** that Appellant's appointment to the Senior Clerk Stenographer position was an interim appointment within the meaning of *N.J.A.C.* 4A:4-1.6. I further **CONCLUDE** that even if deemed temporary or provisional, Appellant has not met her obligation to showing that her appointment converted to a permanent one under *Kyer.*

In that Appellant has not shown the "disclosure of information on the violation of any law or rule," she has not met her burden within the meaning of *N.J.A.C.* 4A:2-1.4. Thus, her termination cannot be in retaliation for such a disclosure and she was not "whistleblowing" within the meaning of *N.J.S.A.* 11A:2-24.

In that I have concluded that O'Reilly's motive for terminating Appellant was not motivated by any "whistleblowing" activity, it is unnecessary to determine whether the termination was for a legitimate reason. Public employees without tenure protection may be terminated, absent a showing of retaliation for whistleblowing, for any reason or no reason at all.

CONCLUSION AND ORDER

For the foregoing reasons and authorities cited, I **CONCLUDE** that Appellant's claims under both *N.J.S.A.* 34:13A-5.4 and *N.J.S.A.* 11A:2-24 have not been proved. I, therefore, **ORDER** that appellant's claims be **DISMISSED** and the action of Respondent in terminating Appellant's employment be **AFFIRMED.**

I hereby **FILE** my initial decision with the **MERIT SYSTEM BOARD** and **PUBLIC EMPLOYMENT RELATIONS COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **MERIT SYSTEM BOARD** and **PUBLIC EMPLOYMENT RELATIONS COMMISSION,** which by law is authorized to make a final decision in this matter. If the Merit System Board does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, DEPARTMENT OF PERSONNEL, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312,** and **PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 W. State Street, PO Box 429, Trenton, New Jersey 08625-0429,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Oct. 12, 1999
DATE

Thomas R. Vena
THOMAS R. VENA, ALJ

Receipt Acknowledged:

10/15/99
DATE

Henry Mauriello
MERIT SYSTEM BOARD

DATE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mailed to Parties:

OCT 18 1999
DATE

Barbara A Hamed
OFFICE OF ADMINISTRATIVE LAW

pb

APPENDIX

Witnesses

For Appellant:

Katherine E. Bergmann
Marlene Lightcap

For Respondent:

Jerry Coyle
Daniel H. Gardner
John C. Mussara
Debra Mowrey
James J. Janci
John J. O'Reilly

Exhibits

Joint:

J-1 Appeal Transmittal dated 8/14/95 (5 pgs)
Manuel A. Correia, Esq. to Linda M. Anselmini, Comm.
Exhibit A - Katherine E. Bergmann to Anthony Larice dated 6/16/95 (2 pgs)
Exhibit B - Bergmann to Larice dated 7/20/95 (2 pgs)
Exhibit C - Albert M. Greczylo to Bergmann dated 7/21/95
Exhibit D - John J. O'Reilly to Bergmann

J-2 Merit System Board Decision and Order issued 8/15/96 (6 pgs)

J-3 Joseph Licata, Esq. to Elizabeth Napolitano dated 12/29/95
Attachment: Statements of Marlene Lightcap dated 12/27/95

J-4 David A. Wallace to Elizabeth Napolitano dated 2/20/96 (24 pgs)

J-5 Joseph Licata, Esq. to Elizabeth Napolitano dated 3/22/96 (18 pgs)

J-6 Katherine Bergmann to Joseph Licata, Esq. dated 3/24/96 (13 pgs)

J-7 David A. Wallace to Elizabeth Napolitano dated 5/3/96 (31 pgs)

J-8 PERC Complaint dated 2/7/96 (10 pgs)

J-9 PERC Settlement Agreement dated 5/17/96

J-10 David A. Wallace to Elizabeth B. Carroll dated 9/15/95 (3 pgs)

For Appellant:

P-1 Contract 1/1/94 - 12/31/94 (18 pgs)

P-2 Katherine E. Bergmann to Jerry Coyle dated 9/26/94 (2 pgs)

P-3 Jerry Coyle to Bergmann dated 1/9/95

P-4 Bergmann to Coyle dated 1/18/95

P-5 Bergmann to Coyle dated 1/31/95

P-6 Identification Card: Katherine Bergmann

P-7 Representation Petition dated 3/25/95 (2 pgs)

P-8 Betty Verdejo to John J. O'Reilly dated 5/31/95

P-9 Bergmann to Anthony Larice dated 6/9/95 (2 pgs)

P-10 Bergmann to Arthur Hoenig dated 7/5/95 (4 pgs)

P-11 Bergmann to Larice dated 6/16/95 (3 pgs)

P-12 Civil Service Report 1/19/95 (2 pgs)

P-13 Bergmann to Larice dated 7/29/95 (2 pgs)

P-14 Albert M. Greczylo to Bergmann dated 7/21/95

P-15 O'Reilly to Bergmann dated 7/24/95

P-16 Betty S. Verdejo to John J. O'Reilly dated 7/25/95

P-17 O'Reilly to Verdejo dated 7/27/95 (2 pgs)

P-18 Marlene Lightcap to O'Reilly dated 7/19/95

P-19 O'Reilly to Lightcap dated 7/21/95 (2 pgs)

P-23 O'Reilly to Verdejo dated 7/27/95

P-24 Warren County Prosecutor's Office Rules and Regulations dated 3/26/95 (15 pgs)

For Respondent:

R-1 John J. O'Reilly to Melinda Rae Carlton dated 9/27/94 (2 pgs)

R-2 Contract 1/1/95 - 12/31/97 (32 pgs)

R-3 Contract 1/1/94 - 12/31/94 (67 pgs)

R-4 Jerry Coyle to John O'Reilly dated 2/3/95

R-5 John J. O'Reilly to Susan Osborn dated 4/25/95 (2 pgs)

R-6 Ballot Tally 5/11/95